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Complaint Form, Consent Form, and Complaint Processing Procedures

DISCRIMINATION COMPLAINT FORM
to the
United States Department of Education
Office for Civil Rights

1. Name of person filing this complaint:

Last Name, First, Middle	<u>Swain, Lauren</u>
Address:	<u>8532 N. Ivanhoe St., #208</u>
City, State, Zip Code:	<u>Portland, OR 97203</u>
Home/Work Telephone:	
Email Address:	<u>lauren@paulsouthwick.com</u>

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

Last Name, First, Middle	<u>Jones, Jonathan</u>
Address:	
City, State, Zip Code:	
Home/Work Telephone:	
Email Address:	

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution:	<u>Azusa Pacific University</u>
Address:	<u>901 E. Alost Ave.</u>
City, State, Zip Code:	<u>Azusa, CA, 91702</u>
Department/School:	

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

- ☐ Discrimination **based on sex (specify)**

Discrimination on the basis of sexual orientation and gender identity.

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5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

Azusa Pacific reinstated its ban on same-sex dating while Jonathan was a student. Jonathan and other students were fearful of punishment for having revealed their sexual orientation because the ban had been lifted. Jonathan worried that his scholarship would be revoked. Azusa Pacific later altered its policy again to leave the question of punishment for sexual orientation ambiguous. Azusa Pacific has imposed limitations on the LGBT student group that it has not imposed on other student groups. Please see attached declaration.

6. What is the most **recent date** you were discriminated against?

Date: Current, Ongoing

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

X I am requesting a waiver of the 180-day time frame for filing this complaint.

Please explain why you waited until now to file your complaint.

- 1) the Covid-19 pandemic;
- 2) The Trump administration's policies and statements about religious exemptions to Title IX;
- 3) The Trump administration's policies and statements about Title IX not prohibiting discrimination on the basis of sexual orientation or gender identity.
- 4) Although the initial act of discrimination took place more than 180 days ago, Jonathan's complaint should not be considered time-barred because Azusa Pacific continues to discriminate against Jonathan and to promulgate policies and practices that discriminate against LGBTQ+ students.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

No

9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the

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other agency or court.

Agency or Court: U.S. District Court - District of Oregon - Eugene Division

Date Filed: 03/29/21

Case Number or Reference: 6:21-cv-00474-AA

Results of Investigations/Findings by Agency or Court: Pending

10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information **is not required**, but it will be helpful to us.

Not applicable

11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

Jonathan would like Azusa Pacific's policies amended to state that (1) same-sex dating relationships and displays of affection will be treated by Azusa Pacific in the same manner as opposite-sex dating relationships and displays of affection; (2) students will not be punished for coming out as LGBTQ+ or for expressing their sexual or gender identity (through pronouns, clothing, hair, makeup, etc.); (3) Azusa Pacific will not encourage or facilitate conversion therapy or any other sexual or gender orientation change efforts; (4) students who report sexual or physical assault will be granted safe harbor from discipline relating to sexual activity or other code of conduct violations; and (5) Azusa Pacific's non-discrimination policy includes sexual orientation and gender identity as applied to all aspects of Azusa Pacific, including housing and other programs.

12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

07/24/21

(Date)

Jul 24, 2021

(Date)



(Signature)

Jonathan

(Signature of person in Item 2)



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200, ROOM 1545
SAN FRANCISCO, CA 94102

May 3, 2022

Lauren Swain
Paul Southwick Law, LLC
8532 N. Ivanhoe Street, #208
Portland, OR 97203

By email only to: lauren@paulsouthwick.com

Re: Azusa Pacific University
OCR Case No. 09-21-2318

Dear Ms. Swain:

On July 27, 2021, the United States Department of Education's Office for Civil Rights (OCR) received your complaint against Azusa Pacific University. You filed the complaint on behalf of a former student at the University, whom we will refer to as the Student, and on behalf of current LGBTQ+ students at the University. You allege that the University discriminates on the basis of sexual orientation and gender identity. Specifically, you allege that:

1. The University discriminated against the Student in the Spring 2021 semester and continues to discriminate against LGBTQ+ students based on sexual orientation and gender identity because its policies and practices, including in its current Student Handbook, prohibit sexual intimacy outside of marriage and endorse the doctrine that marriage is between a man and a woman (Allegation 1);
2. The University discriminated against the Student in the Spring 2021 semester and continues to discriminate against LGBTQ+ students based on sexual orientation and gender identity by refusing to fully recognize the LGBTQ+ student group on campus (Allegation 2); and
3. The University discriminated against the Student based on sexual orientation and gender identity because changes the University made to its policies on same-sex dating in 2018 and 2019, as well as a letter a University professor sent to the University in fall 2018 about such changes, left the Student fearful of being punished and having their scholarship revoked (Allegation 3).

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

EXHIBIT D

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OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance from the Department. As a recipient of financial assistance from the Department, the University is subject to Title IX.

OCR is opening Allegations 1 and 2 for investigation with respect to the University's policies and practices in the 2021-2022 academic year and the spring 2021 semester, the Student's last semester, because OCR has determined that it has jurisdiction, that these allegations were timely filed, and that they are appropriate for investigation under the laws and regulations enforced by OCR. If you disagree with the way OCR stated Allegation 1 or 2, please contact the OCR staff person identified below within 10 days of the date of this letter.

Please note that opening the allegations for investigation in no way implies that OCR has made a determination with regard to their merits. During the investigation, OCR is a neutral fact-finder, collecting, and analyzing relevant evidence from you, the University, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and fully responds to the allegations, in accordance with the provisions of Article III of OCR's *Case Processing Manual* (CPM), available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>. In accordance with the CPM, OCR will provide a copy of the complaint to the University.

After carefully reviewing the information you provided, OCR has determined that it will not investigate Allegation 3. According to the information provided in the Student's Declaration, which was attached to your complaint, the Student enrolled at the University in August 2017, and the acts of alleged discrimination involving changes to the University's policies on same-sex dating occurred in 2018 and 2019 and the related letter was issued in fall 2018. As explained in Section 106 of the CPM, OCR generally will take action only with respect to allegations that are filed within 180 days of the alleged discrimination unless OCR grants a waiver under Section 107 of the CPM. You filed this complaint on July 27, 2021, more than 180 days after the University allegedly discriminated against the Student in 2018 and 2019.

You requested a waiver of the 180-day filing requirement for Allegation 3 on the following bases:

- 1) the COVID-19 pandemic;
- 2) the Trump administration's policies and statements about religious exemptions to Title IX;
- 3) the Trump administration's policies and statements about Title IX not prohibiting discrimination on the basis of sexual orientation or gender identity; and
- 4) although the initial act of discrimination took place more than 180 days ago, [the Student's] complaint should not be considered time-barred because the University continues to discriminate against [the Student] and to promulgate policies and practices that discriminate against LGBTQ+ students.

OCR has reviewed your request and declines to waive OCR's 180-day deadline. OCR is accordingly dismissing Allegation 3 as untimely under Section 108(d) of the CPM.

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You have a right to appeal OCR's dismissal of Allegation 3 within 60 calendar days of the date indicated on this letter. An appeal can be filed electronically, by mail, or by fax. You must either submit (1) a completed appeal form online at <https://ocrcas.ed.gov/content/ocr-electronic-appeals-form> or (2) a written statement of no more than 10 pages (double-spaced, if typed) by email to OCR@ed.gov, by fax to 202-453-6012, or to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. The filing date on an appeal is the date the appeal is postmarked, submitted electronically, or submitted by fax. In the appeal, you must explain why you believe the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would result in the case being opened for investigation; failure to do so may result in dismissal of the appeal.

OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have any questions or concerns, please contact Blake Thompson, Deputy Chief Attorney, at 415-486-5630 or by email at blake.thompson@ed.gov.

Sincerely,



Anamaria Loya
Chief Attorney